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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/798,892

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Christopher T. Evans

UNION STREET

4904

7590

10/20/2006

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EXAMINER

WAGGONER, TIMOTHY R

ART UNIT

PAPER NUMBER

3651

DATE MAILED: 10/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/798,892	Applicant(s) EVANS ET AL.	
	Examiner Timothy R. Waggoner	Art Unit 3651	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 August 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-86 is/are pending in the application.
- 4a) Of the above claim(s) 2-12, 16, 17, 25-32, 35-54, 80-82 and 84-86 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 21 and 60 is/are allowed.
- 6) ☒ Claim(s) 1, 13-15, 18-24, 33, 34, 55-69, 79 and 83 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date: _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date: _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Applicant's arguments filed 08/22/2006 have been fully considered but they are not persuasive.

Applicant's arguments regarding claims 1, 61 and 64 that the Ross reference does not disclose a lid positioned over an open end of a container and that the opening cited by the examiner is not considered to be an open end of the container are found to be non-persuasive. Each side of a container can be considered an end so the wall 16 ca still be considered an end and its opening 30 and the lid that covers that opening still anticipates the claims of applicant. For the foregoing reasons claims 1, 61 and 64 stand rejected.

Applicant's arguments regarding claim 19 that the Ross reference does not disclose an orifice created at the intersection of two trap doors and further that the opening indicated in the earlier rejection does not constitute an orifice are found to be non-persuasive. The broadest definition of an orifice is any opening and the opening of Ross is readable on this definition. For the foregoing reasons claim 19 stands rejected.

Applicant's arguments regarding claim 61 that the Ross reference does not disclose a dispensing portion which may be pushed into the container and an orifice on that dispensing portion which defined by one or more lobes which protrude from the dispensing portion are found to be non-persuasive. The dispensing portion of Ross consists of all elements defining the orifice of Ross, which includes the lobe portions 62 and 60 and the trap door elements 50 and 52. The claim does not state that the orifice

must be formed in the trap door segment of the at least one dispensing portion. For the foregoing reasons claim 61 stands rejected.

In response to applicant's argument regarding claim 62 that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., "lobes and recesses on each of the hinged dispensing portions") are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Claim 61 does not limit the number of dispensing portions which define the orifice and hence does not imply that all features which make up the dispensing portion must exist on the trap doors.

Applicant's arguments regarding claim 63 that the Ross reference does not anticipate the method of use for the dispenser are found to be non-persuasive. The Ross reference discloses multiple generic claiming of the invention and the specific species elected by applicant and hence would anticipate the method to use said dispenser. For the foregoing reasons claim 63 stands rejected.

Applicant's arguments regarding claim 69 that the Ross reference does not disclose that the parts of the openings distributed among the inner edges are found to be non-persuasive. The edges of the dispensing portion define the opening therefor they must at least consist of parts of the opening. For the foregoing reasons claim 69 stands rejected.

Applicant's arguments regarding claim 1 that Kanfer does not have a cover on the open end of container is found to be non-persuasive. In figure 7 you can clearly see the cover of kanfer is snap fitted on to the open end of the container C. For the foregoing reasons claim 1 stands rejected.

Applicant's arguments regarding claim 55 that Kanfer does not disclose that the orifice and lobes are various configurations is found to be non-persuasive. In the passage indicated in the initial rejection Kanfer clearly state that other configurations can be used. For the foregoing reasons claim 55 stands rejected.

Applicants arguments regarding claim 58 and 59 that Kanfer does not disclose recesses are rounded or that the lobes are curved lobes between curved slots was found to be non-persuasive. If the lobes are rounded the recess must at least be partially rounded since the lobes and recesses are defined by the same edges and the lobes and recesses of Kanfer appear rounded in the figures. For the foregoing reasons claims 58 and 59 stand rejected.

Applicants arguments regarding claim 64 that Reinke does not disclose restrictions and that the opening of Reinke is circular and without restriction. The circular opening of Reinke restrict the opening and pinch the towels. For the foregoing reasons claim 64 stands rejected.

Applicants arguments regarding claim 65 that Reinke does not disclose complementary openings was found to be non-persuasive. The circular opening of Reinke which restricts the opening is mirrored on each flap. For the foregoing reasons claim 64 stands rejected.

Applicant's arguments regarding claim 33 that the Geib reference could not anticipate the claims because it invention was reduced to practice prior to the filing of Geib. This Argument was not accompanied with the proper evidence to support this claim. For the foregoing reasons claim 33 stands rejected.

Applicant's argument regarding the rejection of claim 57 that the Kanfer reference in with of aesthetic choice was found to be non-persuasive. The claims nor the specification attribute the triangular recesses with the properties argued by applicant. For the foregoing reasons claim 33 stands rejected.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 1,13-15,18-20,22-24,61-64 and 67-69 are rejected under 35 U.S.C. 102(b) as being anticipated by Ross USPN 3,982,659.

Ross discloses a towelette dispenser comprising:

(Re claim 1) "a container for holding the multiple towelettes" (20 figure 2). "an open end on the container" (30 figure 2). "a lid connected to the container positioned over the open end of the container" (32 figure 2). "a cover on the open end for sealing the container" (34 figure 2). "an orifice in the lid for passing towelettes out of the container" (66 figure 2). "one or more lobes protruding into the orifice" (62,64 figure 2). "a first towelette and a leading portion of a subsequent towelette are pulled through the orifice and a connection between the first towelette and the subsequent towelette are separated" (lines 40-53 col 6). "wherein a leading portion of the subsequent towelette remains outside of the lid and secured with in the orifice" (15 figure 3).

(Re claim 13) "the lid comprises two trap doors" (50,52 figure 2).

(Re claim 14) "the two trap doors are connected to the lid at opposite edges" (50,52 figure 1).

(Re claim 15) "the trap doors are connected to the lid by living hinges (56,58 figures 1 and 2).

(Re claim 18) "the two trap doors are mirror images" (50,52 figure 1)

(Re claim 19) "orifice is created at the intersection of the two trap doors" (66 figure 2)

(Re claim 20) "lobes on each trap door cooperate for holding a leading portion of a towelette" (68 figure 2)

(Re claim 22) "cover is connected to the lid by a living hinge" (36 figure 2)

(Re claim 23) "cover overlies the lid when in a closed position" (lines 26-28 col 5).

(Re claim 24) "lobes pinch the leading portion of a towelette" (lines 35-36 col 7).

(Re claim 61) "a container for holding the multiple towelettes" (20 figure 2). "the container having an open end" (30 figure 2). "a dispensing lid attached to the open end of the container" (32 figure 1). "a cover that is hingedly attached to the lid, such that the cover engages a portion of the lid to seal the open end of the container when the cover is in a closed position" (34 figure 1). "at least one dispensing portion that is hingedly attached to the dispensing lid such that the dispensing portion may be pushed inward into the container for accessing a towelette" (50,52 figure 1). "an orifice located on the dispensing portion, wherein the orifice is defined by one or more lobes which protrude from the dispensing portion and by one or more recesses through the dispensing portion" (66 figure 2). "the lobes and recesses of the orifice engage and separate the towelettes as each towelette is pulled through the orifice of the dispensing lid" (lines 40-53 col 6).

(Re claim 62) two dispensing portions are provided, the dispensing portions being mirror imaged, and the orifice is defined as the intersection of the dispensing portions by lobes and recesses configured on each of said dispensing portions" (66 figure 2)

(Re claim 63) The method claim 63 is anticipated by the Ross reference as it structurally anticipates the claimed invention and is hence capable of being used by the same method.

(Re claim 64) "series of towelettes joined end to end with relatively weak bridges" (13 figure 3). "a container holding the series" (20 figure 2). "an open end on the container" (30 figure 2). "a towelette dispenser connected to the open end" (14 figure 1). "towelette dispenser having an opening with restrictions" (66 figure 2). "restrictions holding a leading edge of a towelette while a preceding towelette is pulled away from the opening" (lines 40-53 col 6). "towelette dispenser being movable relative to the open end of the container for reaching into the container through the open end and pulling a towelette from the series into the opening" (56,58 figures 1 and 2).

(Re claim 67) "dispenser comprises a cap connected to the open end of the container, (14 figure 1) at least one hinged flap movable into the container and having an opening" (50,52 figure 1).

(Re claim 68) "a cover hinged on the cap for closing over the hinged flap and sealing the open end of the container" (34 figure 1).

(Re claim 69) "more than one hinged flap having outer edges hinged on the cap and having inner edges in close proximity to each other, and wherein parts of the opening are distributed among the inner edges of the hinged flaps" (50,52 figure 2).

(Re claim 79,83) "a container" (10 figure 2). "an open end on the container" (30 figure 2). "a cap connected to the container positioned over the open end" (32 figure 2). "a cover hingedly attached to the cap" (34 figure 2). "a dispenser extending inward on the cap" (50,52,60,62 figure 2). "an orifice in the dispenser on the cap" (66 figure 2). "one or more rounded lobes" (50,52,60,62 figure 2). "first towelette ... subsequent towelette ... pulled from the container" (lines 40-53 col 6).

Claim 1,55,56,58 and 59 are rejected under 35 U.S.C. 102(b) as being anticipated by Kanfer et al USPN 5,718,353.

Kanfer discloses a towelette dispenser comprising:

(Re claim 1) "a container for holding the multiple towelettes" (20 figure 2). "an open end on the container" (C figure 1). "a lid connected to the container positioned over the open end of the container" (13 figure 1). "a cover on the open end for sealing the container" (30 figure 1). "an orifice in the lid for passing towelettes out of the container" (23b figure 2). "one or more lobes protruding into the orifice" (23c figure 2). "a first towelette and a leading portion of a subsequent towelette are pulled through the orifice and a connection between the first towelette and the subsequent towelette are separated" (T figure 1). "wherein a leading portion of the subsequent towelette remains outside of the lid and secured with in the orifice" (T figure 1).

(Re claim 55) "the orifice and lobes are various configurations" (lines 60-62 col 3)

(Re claim 56) "the orifice further comprises recesses between the lobes" (23c figure 2) the spaces defined between the lobes.

(Re claim 58) "the recesses are rounded" (23c figure 2) the lobes are rounded so the recesses are also rounded.

(Re claim 59) "the orifice and the lobes are curved lobes between curved slots" (23c figure 2)

Claims 64 and 65 rejected under 35 U.S.C. 102(e) as being anticipated by Reinke et al. USPN 6,910,579.

Reinke discloses a towelette dispenser comprising:

(Re claim 64) "series of towelettes joined end to end with relatively weak bridges" (62 figure 8). "a container holding the series" (16 figure 8). "an open end on the container" (17 figure 11). "a towelette dispenser connected to the open end" (14 figure 5). "towelette dispenser having an opening with restrictions" (20 figure 3). "restrictions holding a leading edge of a towelette while a preceding towelette is pulled away from the opening" (figure 10). "towelette dispenser being movable relative to the open end of the container for reaching into the container through the open end and pulling a towelette from the series into the opening" (figure 7).

(Re claim 65) "towelette dispenser comprises two opposing flaps hinged from the opposite sides of the open end of the container and having adjacent edges of the container and where in the opening comprises partial complementary openings formed in the adjacent edges" (22,24 figure 1).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 33,34 and 66 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ross USPN 3,982,659 in view of Geib et al. USPN 6,786,447.

(Re claim 33) Ross discloses the dispenser as claimed in claim 1.

Ross does not disclose the lid being connected to the container by a living hinge.

Geib teaches the use of a living hinge to connect the lid to the container.

It would be obvious to one skilled in the art to modify the lid of Ross with a living hinge in view of the teachings of Geib because it helps prevent the loss or misplacement of the lid.

(Re claim 34) "slit in the lid for helping thread towelettes" (70 figure 2)

(Re claim 66) Ross discloses the dispenser as claimed in claim 64.

Ross does not disclose dispensing from the middle of a roll of towelettes.

Geib teaches the art recognized method of dispensing from the center of a roll of towelettes.

It would be obvious to one skilled in the art to use the dispenser of Ross to dispense from the middle of a towelette roll in view of the teachings of Geib as it is another art recognized way of supplying a dispenser with towelettes.

Claim 57 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kanfer et al. USPN 5,718,353.

Kanfer discloses a dispenser with rounded recesses between the lobes.

Kanfer does not disclose triangular recesses between the lobes.

The changing of the recesses from rounded to triangular was given no merit in the specification and as such is considered to be an aesthetic choice and unpatentable over the prior art.

Election/Restrictions

Newly submitted claims 80-82 and 84-86 directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: Claims are directed to species which were not elected in the original restriction.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 80-82 and 84-86 withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Allowable Subject Matter

Claims 21 and 60 are allowed over the present prior art.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Timothy R. Waggoner whose telephone number is (571) 272-8204. The examiner can normally be reached on Mon-Thu 8am-2pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gene Crawford can be reached on (571) 272-6911. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

TRW


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